



Department of Planning, Housing, & Community Development

Mayor, Richard C. David
Jennifer M. Taylor, Acting Director

STAFF REPORT

TO: Zoning Board of Appeals Members
FROM: Planning, Housing and Community Development
DATE: March 12, 2014
SUBJECT: 65 Rotary Ave; Use Variance
CASE: 2014-06

A. VARIANCE REQUESTED

The applicant has submitted an application for a use variance to establish a bakery at 65 Rotary Avenue. The property is zoned R-1 Residential Single Unit Dwelling District. The establishment of a bakery is not permitted in this district, and therefore necessitates a use variance from the Zoning Board of Appeals.

The applicant has proposed for the site a takeout-only bakery and sandwich shop with 1,111 square feet of total floor space. The bakery will operate 6 days a week between the hours of 7:00am -8:00pm Monday through Saturday. The applicant has stated that deliveries will occur biweekly between the hours of 2:00pm and 5:00pm. The bakery will have 2 employees and serve a projected 25 customers per day.

In granting a use variance, the Zoning Board of Appeals must find the applicant has adequately demonstrated the following:

- (a). **Economic deprivation:** That under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question. Deprivation must be established by competent financial evidence;
- (b). **Unique circumstances:** That the alleged hardship for the property is unique and does not apply to a substantial portion of the district or neighborhood;
- (c). **Neighborhood character:** That granting the variance will be in harmony with the spirit and intent of this ordinance and will not alter the essential character or quality of the neighborhood, endanger public health or safety, or substantially diminish or impair property values in the neighborhood.
- (d). **Self-created hardship:** That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in granting a use variance, shall grant the minimum variance that it shall deem necessary and adequate, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

B. SITE REVIEW

The property known as 65 Rotary Avenue is located on the southwest corner of Rotary and Seminary Avenues. The lot is occupied by a one story tavern, which is attached to a vacant 2-story residential building. The existing structures are situated on a 6,028ft² lot.

Land use in the vicinity of the site is primarily two-family residential, with a less substantial mix of single- and multi-family structures. Recreation Park is located to the northeast. There is no commercial land usage in the immediate vicinity, with the exception of Abel's Pub, which is located on the subject property.

C. PREVIOUS ZONING BOARD & PLANNING COMMISSION ACTIVITY

None.

D. ENVIRONMENTAL IMPACT

The applicant's proposal is a SEQR **UNLISTED** Action. The Planning Commission may be the lead agency to determine any environmental significance. Motion to determine what type of action:

- a. Type I
- b. Type II
- c. **Unlisted**
2. Determine Lead Agency and other involved agencies.
3. Motion to schedule a public hearing.
4. After the Public Hearing, Determination of Significance. (See EAS Part 2 & Part 3)

	NO, OR SMALL IMPACT MAY OCCUR	MODERATE TO LARGE IMPACT MAY OCCUR
Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	X	
Will the proposed action result in a change in the use or intensity of use of land?	X	
Will the proposed action impair the character or quality of the existing community?	X	
Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	X	
Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	X	
Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	X	
Will the proposed action impact existing: A. public / private water supplies? B. public / private wastewater treatment utilities?	X	
Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	X	

Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	X	
Will the proposed action result in an increase in the potential for erosion, flooding or drainage Problems?	X	
Will the proposed action create a hazard to environmental resources or human health?	X	

E. STAFF FINDINGS

Planning Staff has the following findings:

- 1. The Zoning Board of Appeals must determine that under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question.**

The property is currently a 2-unit dwelling. Because of the fact that the building is attached to a tavern with late hours and occasional live entertainment, the property owner has been unable to rent the ground floor unit of the dwelling. The owner is, therefore, deprived of economic benefit from half of his property.

- 2. The Zoning Board of Appeals must determine if the requested variance will produce an undesirable change in the character of the neighborhood.**

The variance would allow a bakery, which is a relatively low-intensity use. In addition, the property already contains a commercial establishment. The establishment of a bakery on the same site, therefore, does not constitute a significant change.

- 3. The Zoning Board of Appeals must determine that the alleged hardship for the property is unique and does not apply to a substantial portion of the district or neighborhood.**

The hardship is unique to the subject property, at it is the only property attached to a noise-producing commercial use.

- 4. The Zoning Board of Appeals must determine whether or not the requested variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

The proposed project could have an impact on vehicular traffic and parking. However, takeout-only format of the business will not require customers to park nearby for long periods. The applicant also expects a large segment of the bakery's market to be local pedestrians.

- 5. The Zoning Board of Appeals must determine if the alleged difficulty was self-created.**

F. RECOMMENDED CONDITIONS OF APPROVAL

If the Zoning Board approves the proposed variance Staff recommends the following conditions of approval as per the recommendation of the Engineering Department:

- 1. Prior to the occupancy of the building, or the issuance of building permits if required, a**

revised site plan shall be submitted to the Planning Department for review showing the repair of the curb and sidewalk on the north side of the property, with the exception of the existing curb opening north of the parking area. The work shall be completed prior to the issuance of a Certificate of Occupancy by the Department of Building, Construction & Code Enforcement. Alternatively, a temporary certificate of occupancy may be issued if an engineer's estimate for the proposed work is obtained and a surety bond is posted for the full amount of the estimate.

F. ENCLOSURES

Enclosed are copies of the floor plan, site photographs, and the application.

Prepared by:

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Planner